

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON, AT SEATTLE

RICHARD J. KLEIN,)	Case No. 2:09-CV-1342 JCC
)	
Plaintiff,)	
)	
v.)	
)	
GREGORY DEMOPULOS, an individual,)	DEFENDANT OMEROS' ANSWER
RAY ASPIRI, an individual, THOMAS)	AND AFFIRMATIVE DEFENSES TO
CABLE, an individual, PETER DEMOPULOS,)	COMPLAINT FOR DAMAGES AND
an individual, LEROY HOOD, an individual,)	COUNTERCLAIMS
DAVID MANN, an individual, JEAN-)	
PHILIPPE TRIPET, an individual, and)	
OMEROS CORPORATION, a Washington)	
Corporation,)	
)	
Defendants.)	

Defendant Omeros Corporation answers Richard J. Klein's ("plaintiff") Complaint for Damages as follows. Except as expressly admitted, Defendant Omeros denies the allegations of the Complaint for Damages.

I. ANSWER TO ALLEGATIONS REGARDING "PARTIES"

1. Answering paragraph 1, Defendant Omeros admits the allegations in this paragraph on information and belief.

2. Answering paragraph 2, Defendant Omeros admits the allegations in this paragraph.

3. Answering paragraph 3, Defendant Omeros admits the allegations in this paragraph.

4. Answering paragraph 4, Defendant Omeros admits the allegations in this paragraph.

5. Answering paragraph 5, Defendant Omeros admits the allegations in this paragraph.

II. ANSWER TO ALLEGATIONS REGARDING "JURISDICTION AND VENUE"

6. Answering paragraph 6, this paragraph is a statement of plaintiff's legal position and does not require a response. If a response is required, Defendant Omeros does not contest the jurisdiction of this Court. Defendant Omeros denies that plaintiff has any meritorious claims under the Federal False Claims Act or that the plaintiff is entitled to any relief whatsoever in this action.

7. Answering paragraph 7, this paragraph is a statement of plaintiff's legal position and does not require a response. If a response is required, Defendant Omeros does not contest the supplemental jurisdiction of the Court. Defendant Omeros denies that plaintiff has any meritorious supplemental claims or that the plaintiff is entitled to any relief whatsoever in this action.

8. Answering paragraph 8, this paragraph is a statement of plaintiff's legal position and does not require a response. If a response is required, Defendant Omeros does not contest venue.

III. ANSWER TO ALLEGATIONS REGARDING "FACTUAL BACKGROUND"

9. Answering paragraph 9, Defendant Omeros admits the allegations in this paragraph.

10. Answering paragraph 10, Defendant Omeros admits the allegations in this paragraph, although they are incomplete and out of context. Defendant Omeros states that the

1 Indemnification Agreement did not provide a right of indemnity in “any action, suit, claim or
2 proceeding instituted by or at the direction of Indemnitee unless such action, suit, claim or
3 proceeding is or was authorized by the Company’s Board of Directors.” Defendant Omeros
4 states that no such authorization was ever provided to plaintiff by the Omeros Board of
5 Directors.

6 11. Answering paragraph 11, Defendant declines to speculate as to the meaning of the
7 phrase “problems and issues,” and therefore, denies the allegations in this paragraph.
8 Defendant Omeros specifically denies any implication that Omeros’ business, financial and
9 accounting practices and procedures were unlawful or improper. Defendant Omeros states that,
10 as Chief Financial Officer, plaintiff was responsible to test and improve Omeros’ business,
11 financial and accounting practices and procedures.

12 12. Answering paragraph 12, Defendant Omeros denies the allegations in this
13 paragraph.

14 13. Answering paragraph 13, Defendant Omeros denies the allegations in this
15 paragraph. Defendant Omeros specifically denies any implication that Dr. Demopulos
16 unlawfully failed to report taxable income or attempted to engage in any improper practice
17 concerning the tax reporting of his exercise of stock options or payment of taxes from a bonus
18 award, or that plaintiff discovered or remedied any such attempt.

19 14. Answering paragraph 14, Defendant Omeros denies the allegations in this
20 paragraph.

21 15. Answering paragraph 15, Defendant Omeros denies the allegations in this
22 paragraph.

23 16. Answering paragraph 16, Defendant Omeros denies the allegations in this
24 paragraph. Defendant Omeros states that Omeros gave Klein the choice to wait to exercise his
25 options until the Board determined a current fair market value, but Klein chose to exercise his
26 stock options when there was not a current Board-determined value, which required Omeros to
27 estimate the fair market value of the stock. Defendant Omeros states that Omeros provided a

1 range in which Omeros thought the fair value might lie and plaintiff determined that the fair
2 market value of the stock at the time of plaintiff's exercise was \$1.75. Defendant Omeros
3 specifically denies any attempted implication that Omeros or Dr. Demopulos retaliated against
4 plaintiff.

5 17. Answering paragraph 17, Defendant Omeros admits that Omeros' Controller
6 untimely submitted an expense report in November 2008. Defendant Omeros denies the
7 remaining allegations in this paragraph. Defendant Omeros specifically denies any attempted
8 implication that Omeros' practices and procedures were unlawful or improper and denies that
9 any amounts properly due to the State of Washington were not paid. Defendant Omeros
10 affirmatively states that plaintiff's failure to propose an appropriate signature policy and
11 plaintiff's repeated refusal to accept an appropriate signature policy caused the delay in
12 implementation of the signature policy, not any inaction on the part of other officers of Omeros.

13 18. Answering paragraph 18, Defendant Omeros admits that plaintiff met with the
14 Chair of the Audit Committee regarding the signature policy in November 2008. Defendant
15 Omeros denies the remaining allegations in this paragraph. Defendant Omeros specifically
16 denies any attempted implication that Omeros' practices and procedures were unlawful or
17 improper. Defendant Omeros specifically denies that the reports prior to December 2, 2008,
18 invoked or constituted a complaint or report under the company's Whistleblower Policy.

19 19. Answering paragraph 19, Defendant Omeros admits that Dr. Demopulos and
20 plaintiff met to discuss financial matters related to Omeros, including the signature policy, after
21 plaintiff's meeting with the Audit Committee. Defendant denies that plaintiff raised the issue of
22 "Defendant Gregory Demopulos' anger about [plaintiff's] reports to the Audit Committee."
23 Defendant Omeros denies the remaining allegations in this paragraph. Defendant Omeros states
24 that plaintiff and Dr. Gregory Demopulos met on December 2, 2008, and after they discussed
25 company financial issues, the meeting turned into a verbal evaluation of plaintiff's performance,
26 and Dr. Demopulos identified specific areas for improvement in plaintiff's performance,
27

1 including, but not limited to, plaintiff's excessive delegation of substantive work and plaintiff's
2 distracting behavior during meetings with others, as well as other issues.

3 20. Answering paragraph 20, Defendant Omeros admits that plaintiff requested a
4 formal performance review and admits that in a company meeting Dr. Demopulos recognized the
5 efforts of the transaction team and plaintiff for their efforts in contributing to securing debt
6 financing, in an attempt to make plaintiff feel like part of the team and in an attempt to build
7 plaintiff's credibility within the company, given negative impressions of plaintiff held by other
8 Omeros employees. Defendant Omeros specifically denies that plaintiff was primarily
9 responsible for closing a \$20 million debt financing deal and denies all other allegations in this
10 paragraph.

11 21. Answering paragraph 21, Defendant Omeros admits the allegations in this
12 paragraph, and that, relevant to this action, Omeros is the successor-in-interest to certain grants
13 awarded by the National Institute of Health ("NIH").

14 22. Answering paragraph 22, Defendant Omeros denies that Defendant
15 Gregory Demopulos instructed scientists to falsely record their time. Defendant Omeros admits
16 that Dr. Gaitanaris provided instructions on time keeping practices based on Dr. Gaitanaris'
17 belief that recording effort in keeping with these practices would result in total time allocations
18 to the grant that were less than the overall time actually spent on the grant by Omeros' personnel.
19 Defendant Omeros states that these practices, which were later corrected by Defendant Omeros,
20 did not result in any overbilling to the NIH grant, and rather the federal government was charged
21 for less than all time spent on the grant. Defendant Omeros denies the remaining allegations in
22 this paragraph.

23 23. Answering paragraph 23, Defendant Omeros denies that Defendant
24 Gregory Demopulos instructed scientists to falsely record their time. Defendant Omeros admits
25 that Dr. Gaitanaris provided instructions on time keeping practices based on Dr. Gaitanaris'
26 belief that recording effort in keeping with these practices would result in total time allocations
27 to the grant that were less than the overall time actually spent on the grant by Omeros' personnel.

1 Defendant Omeros states that these practices, which were later corrected by Defendant Omeros,
2 did not result in any overbilling to the NIH grant, and rather the federal government was charged
3 for less than all time spent on the grant. Defendant Omeros denies the remaining allegations in
4 this paragraph.

5 24. Answering paragraph 24, Defendant Omeros admits that plaintiff reported a
6 concern regarding timekeeping practices on an NIH grant project to the Audit Committee and
7 denies the remaining allegations in this paragraph.

8 25. Answering paragraph 25, Defendant Omeros admits that Ms. Kelbon and
9 Dr. Demopulos met with plaintiff regarding his complaint. Defendant Omeros states that
10 Ms. Kelbon and Dr. Demopulos assured plaintiff that they were taking the complaint seriously
11 and that Ms. Kelbon asked plaintiff if plaintiff would like to report anything else about plaintiff's
12 concerns to her. Defendant Omeros denies the remaining allegations in this paragraph.
13 Defendant Omeros specifically denies that Dr. Demopulos or Ms. Kelbon retaliated against
14 plaintiff in any way.

15 26. Answering paragraph 26, Defendant Omeros admits that Dr. Demopulos
16 requested Ms. Kelbon's presence at a meeting with plaintiff. Defendant Omeros denies the
17 remaining allegations in this paragraph. Defendant Omeros specifically denies that
18 Dr. Demopulos or Ms. Kelbon retaliated against plaintiff in any way.

19 27. Answering paragraph 27, Defendant Omeros denies any implication that plaintiff
20 discovered "fraudulent timekeeping." Defendant Omeros states that it launched an immediate
21 investigation into plaintiff's complaint. Defendant Omeros admits the remaining allegations in
22 this paragraph.

23 28. Answering paragraph 28, Defendant Omeros admits that plaintiff incurred
24 personal legal fees, but specifically denies that these fees were incurred as the result of plaintiff's
25 involvement in the Audit Committee's investigation. Defendant Omeros denies the remaining
26 allegations in this paragraph. Defendant Omeros states that plaintiff later presented billings from
27 his attorneys for a period of time that extended well beyond the completion by the Audit

1 Committee of its investigation and that consisted primarily of billings for services of an
2 employment law attorney, who apparently provided plaintiff advice on his own employment with
3 Omeros, and unrelated to matters, for which plaintiff could properly claim indemnification from
4 Omeros.

5 29. Answering paragraph 29, Defendant Omeros admits that the Audit Committee
6 investigation concluded that some of the scientists had recorded in the company's timekeeping
7 system more hours than they individually had actually worked during the relevant time period,
8 while others recorded actual hours worked or less than actual hours worked, during that specific
9 reporting period. However, those reports did not result in any false billing of the government
10 because of internal controls placed by Omeros' Controller, which a reasonably diligent or even
11 cursory investigation by plaintiff would have revealed, if conducted prior to the time that
12 plaintiff made the whistleblower report to the Audit Committee. Defendant Omeros specifically
13 denies any implication it billed the government more hours than the scientists actually worked.

14 30. Answering paragraph 30, Defendant Omeros admits that plaintiff requested a
15 formal performance review with Dr. Demopulos to discuss his performance. Throughout the
16 tenure of plaintiff's employment, Dr. Demopulos and plaintiff had frequent discussions about
17 plaintiff's job performance in which Dr. Demopulos advised plaintiff about concerns with
18 plaintiff's performance and suggested improvements. Defendant Omeros states that plaintiff's
19 performance reviews were handled in the same informal manner as with other executives of
20 Omeros. Defendant Omeros denies the remaining allegations in this paragraph.

21 31. Answering paragraph 31, Defendant Omeros admits that Dr. Demopulos
22 discussed plaintiff's performance in a meeting on January 6, 2009, and that in response to
23 plaintiff's question regarding continued employment with Omeros for a period of three years,
24 Dr. Demopulos informed plaintiff that he could not guarantee continued employment and that
25 plaintiff's employment was at-will. Defendant Omeros denies the remaining allegations in this
26 paragraph. Defendant Omeros specifically denies any attempted implication that Dr. Demopulos
27 or Omeros unlawfully retaliated against plaintiff.

1 32. Answering paragraph 32, Defendant Omeros admits the allegations in this
2 paragraph.

3 33. Answering paragraph 33, Defendant Omeros admits that plaintiff was placed on
4 administrative leave on January 13, 2009, and was eventually terminated. Defendant Omeros
5 denies the remaining allegations in this paragraph. Defendant Omeros specifically denies any
6 attempted implication that Omeros unlawfully retaliated against plaintiff.

7 34. Answering paragraph 34, Defendant Omeros admits the allegations in this
8 paragraph.

9 35. Answering paragraph 35, Defendant Omeros admits that David Mann, Chair of
10 the Audit Committee, resigned in March of 2009.

11 36. Answering paragraph 36, Defendant Omeros admits that it filed its S-1
12 Registration Statement and Preliminary Prospectus with the SEC and that the S-1 is accessible by
13 the public. Defendant Omeros denies the remaining allegations in this paragraph, and the bold
14 captioned phrase that precedes it.

15 37. Answering paragraph 37, Defendant Omeros admits that plaintiff reported that he
16 believed that employees were improperly recording their time to the NIH grant. Defendant
17 Omeros admits that plaintiff claimed that Dr. Demopolus and Dr. Gaitanaris had acted
18 improperly with regard to the time-recording matters alleged by plaintiff. Defendant Omeros
19 states that only the allegation regarding scientists incorrectly reporting certain hours worked on a
20 particular grant were sustained by the Audit Committee, and states that no improper billing to the
21 federal government resulted due to internal controls of the company, and that rather the federal
22 government was charged for less than all time spent on the grant. Defendant Omeros denies that
23 any allegation against Defendant Dr. Gregory Demopulos was sustained by the Audit
24 Committee. Defendant Omeros admits that Dr. Gaitanaris provided instructions on time keeping
25 practices based on Dr. Gaitanaris' belief that recording effort in keeping with these practices
26 would result in total time allocations to the grant that were less than the overall time actually
27 spent on the grant by Omeros' personnel. Defendant Omeros states that these practices, which
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were later corrected by Defendant Omeros, did not result in any overbilling to the NIH grant, and rather the federal government was charged for less than all time spent on the grant. Defendant Omeros denies the remaining allegations or implication in this paragraph.

38. Answering paragraph 38, Defendant Omeros admits that its S-1 states that plaintiff Klein reported to the Audit Committee that “the Company had submitted grant reimbursement claims to the NIH for work that the company had not performed” and that the Audit Committee with the assistance of special outside counsel concluded that “the Company had not submitted claims to the NIH for work the Company had not performed.” Defendant Omeros denies the remaining allegations in this paragraph, and specifically denies that any of the statements in its S-1 were false or misleading.

39. Answering paragraph 39, Defendant Omeros admits that its S-1 states that “the Company terminated Mr. Klein’s employment for reasons other than this incident.” Defendant Omeros denies the remaining allegations in this paragraph, and specifically denies that any of the statements in its S-1 were false or misleading. Defendant Omeros specifically denies the allegation that its disclosure implied that Mr. Klein’s conduct was unlawful.

40. Answering paragraph 40, Defendant Omeros specifically denies that its S-1 does not contain any disclosure about Mr. Mann, and also denies that the allegations in this paragraph have any bearing upon the matters alleged in this suit.

41. Answering paragraph 41, Defendant Omeros denies the allegations in this paragraph.

IV. ANSWER TO PLAINTIFF’S “CLAIMS”

A. Answer to Plaintiff’s Claim Regarding “Violation of the Federal False Claims Act”

42. Answering paragraph 42, Defendant Omeros fully incorporates the admissions and denials in paragraphs 1-41 above.

43. Answering paragraph 43, Defendant Omeros denies that Omeros billed the NIH for hours that were not performed in support of the grant project. The remainder of this

1 paragraph is a statement of plaintiff's legal position, which requires no answer, and Defendant
2 Omeros therefore denies the same.

3 44. Answering paragraph 44, this paragraph is a statement of plaintiff's legal position,
4 which requires no answer, and Defendant Omeros therefore denies the same.

5 45. Answering paragraph 45, Defendant Omeros denies that Omeros billed the NIH
6 for hours that were not performed in support of the grant project. The remainder of this
7 paragraph is a statement of plaintiff's legal position, which requires no answer, and Defendant
8 Omeros therefore denies the same.

9 46. Answering paragraph 46, Defendant Omeros admits that plaintiff "blew the
10 whistle" on what he said he believed were problems with reports related to hours worked on the
11 NIH grant. Defendant Omeros cannot determine what plaintiff actually did or did not know
12 about the truth or falsity of these allegations and therefore denies that plaintiff became aware of
13 anything. Defendant Omeros denies that Omeros billed the NIH for hours that were not
14 performed. The remainder of this paragraph is a statement of plaintiff's legal position, which
15 requires no answer, and Defendant Omeros therefore denies the same.

16 47. Answering paragraph 47, Defendant Omeros denies the allegations in this
17 paragraph.

18 48. Answering paragraph 48, this paragraph is a statement of plaintiff's legal position,
19 which requires no answer, and Defendant Omeros therefore denies the same.

20 **B. Answer to Plaintiff's Claim Regarding "Wrongful Discharge in Violation of**
21 **Public Policy"**

22 49. Answering paragraph 49, Defendant Omeros fully incorporates the admissions
23 and denials in paragraphs 1-48 above.

24 50. Answering paragraph 50, this paragraph is a statement of plaintiff's legal position,
25 which requires no answer, and Defendant Omeros therefore denies the same.

26 51. Answering paragraph 51, this paragraph is a statement of plaintiff's legal position,
27 which requires no answer, and Defendant Omeros therefore denies the same.

52. Answering paragraph 52, this paragraph is a statement of plaintiff's legal position, which requires no answer, and Defendant Omeros therefore denies the same.

53. Answering paragraph 53, Defendant Omeros admits the allegations in this paragraph.

54. Answering paragraph 54, this paragraph is a statement of plaintiff's legal position, which requires no answer, and Defendant Omeros therefore denies the same.

55. Answering paragraph 55, this paragraph is a statement of plaintiff's legal position, which requires no answer, and Defendant Omeros therefore denies the same.

56. Answering paragraph 56, this paragraph is a statement of plaintiff's legal position, which requires no answer, and Defendant Omeros therefore denies the same.

57. Answering paragraph 57, this paragraph is a statement of plaintiff's legal position, which requires no answer, and Defendant Omeros therefore denies the same.

58. Answering paragraph 58, Defendant Omeros denies the allegations of this paragraph.

C. Answer to Plaintiff's Claim Regarding "Breach of Promise of Specific Treatment in a Specific Situation or Promissory Estoppel"

59. Answering paragraph 59, Defendant Omeros fully incorporates the admissions and denials in paragraphs 1-58 above.

60. Answering paragraph 60, Defendant Omeros admits the allegations in this paragraph.

61. Answering paragraph 61, Defendant Omeros admits the allegations in this paragraph.

62. Answering paragraph 62, Defendant Omeros admits the allegations in this paragraph. Defendant Omeros affirmatively states that, as Chief Financial Officer, plaintiff's job duties required that he both investigate matters with a reasonable level of diligence before reporting under the policy, and that his job duties required that he have bottom line responsibility

1 for certain financial reporting and billing matters within the company, including accounting for
2 and financial management of federal grant programs.

3 63. Answering paragraph 63, Defendant Omeros denies the allegations of this
4 paragraph. Defendant Omeros states that plaintiff made the whistleblower report to “mitigate”
5 his perception of a lack of job security, and did not present the complaint in good faith.

6 64. Answering paragraph 64, Defendant Omeros admits the allegations in this
7 paragraph.

8 65. Answering paragraph 65, this paragraph is a statement of plaintiff’s legal position,
9 which requires no answer, and Defendant Omeros therefore denies the same.

10 66. Answering paragraph 66, this paragraph is a statement of plaintiff’s legal position,
11 which requires no answer, and Defendant Omeros therefore denies the same.

12 67. Answering paragraph 67, this paragraph is a statement of plaintiff’s legal position,
13 which requires no answer, and Defendant Omeros therefore denies the same.

14 68. Answering paragraph 68, this paragraph is a statement of plaintiff’s legal position,
15 which requires no answer, and Defendant Omeros therefore denies the same.

16 **D. Answer to Plaintiff’s Claim Regarding “Wrongful Withholding of Wages”**

17 69. Answering paragraph 69, Defendant Omeros fully incorporates the admissions
18 and denials in paragraphs 1-68 above.

19 70. Answering paragraph 70, Defendant Omeros denies the allegations of this
20 paragraph.

21 71. Answering paragraph 71, Defendant admits that it stopped paying plaintiff after
22 he was terminated. The remainder of this paragraph is a statement of plaintiff’s legal position,
23 which requires no answer, and Defendant Omeros therefore denies the same.

24 72. Answering paragraph 72, this paragraph is a statement of plaintiff’s legal position,
25 which requires no answer, and Defendant Omeros therefore denies the same.

26 73. Answering paragraph 73, this paragraph is a statement of plaintiff’s legal position,
27 which requires no answer, and Defendant Omeros therefore denies the same.

1 74. Answering paragraph 74, this paragraph is a statement of plaintiff's legal position,
2 which requires no answer, and Defendant Omeros therefore denies the same.

3 75. Answering paragraph 75, this paragraph is a statement of plaintiff's legal position,
4 which requires no answer, and Defendant Omeros therefore denies the same.

5 **E. Answer to Plaintiff's Claim Regarding "Breach of Indemnification**
6 **Agreement"**

7 76. Answering paragraph 76, Defendant Omeros fully incorporates the admissions
8 and denials in paragraphs 1-75 above.

9 77. Answering paragraph 77, Defendant Omeros admits the allegations in this
10 paragraph.

11 78. Answering paragraph 78, Defendant Omeros admits that the Indemnification
12 Agreement stated that Omeros would reimburse plaintiff for fees he incurred according to the
13 terms and definitions in the agreement, but specifically denies that the characterization of these
14 terms and definitions set forth in paragraph 78 is complete. Defendant Omeros specifically
15 denies that the Indemnification Agreement requires Omeros to pay for any fees associated with
16 plaintiff obtaining independent counsel related to the status of his employment with the company
17 or those presented to the company for indemnity prior to the filing of this action.

18 79. Answering paragraph 79, this paragraph is a statement of plaintiff's legal position,
19 which requires no answer, and Defendant Omeros therefore denies the same.

20 80. Answering paragraph 80, Defendant Omeros denies the allegations in this
21 paragraph on information and belief.

22 81. Answering paragraph 81, Defendant Omeros admits that it has refused to pay
23 legal fees associated with the status of plaintiff's employment with the company and personal
24 legal fees incurred by plaintiff independent of the Audit Committee's investigation.

25 82. Answering paragraph 82, this paragraph is a statement of plaintiff's legal position,
26 which requires no answer, and Defendant Omeros therefore denies the same.

F. Defamation

83. Answering paragraph 83, Defendant Omeros fully incorporates the admissions and denials in paragraphs 1-82 above.

84. Answering paragraph 84, Defendant Omeros denies that any statements in its S-1 were false or misleading. The remaining allegations in this paragraph are a statement of plaintiff's legal position, which requires no answer, and Defendant Omeros therefore denies the same.

85. Answering paragraph 85, this paragraph is a statement of plaintiff's legal position, which requires no answer, and Defendant Omeros therefore denies the same.

AFFIRMATIVE DEFENSES

Having fully answered the Complaint for Damages served by plaintiff, Defendant Omeros pleads the following defenses or affirmative defenses, without waiving any arguments that it may be entitled to assert concerning the burden of proof, legal presumptions or other legal characterizations:

1. Pending discovery, plaintiff's Complaint for Damages in several parts fails to state a claim upon which relief may be granted.

2. Some or all of plaintiff's claims fail because he unreasonably failed to avoid harm.

3. Some or all of plaintiff's claims fail because of the doctrine of unclean hands.

4. Some or all of plaintiff's claims fail because of the doctrine of after acquired evidence.

5. Plaintiff's damages, if any, were proximately caused by or contributed to by acts, omissions, breaches of contract and/or other legal duties of the plaintiff.

6. The acts and alleged injuries, if any, were proximately caused by or contributed to by the acts, omissions, breaches of contract and/or other legal duties of third parties over whom Defendant Omeros had no control.

7. Plaintiff's assumed the risk of some of the harms about which he now complains.

1 8. Plaintiff has failed to mitigate the alleged damages, if any.

2 9. Without assuming any burden of proof not otherwise imposed by law, Defendant
3 Omeros' actions with regard to the response to plaintiff's whistleblower complaint and with regard
4 to discharge of plaintiff from employment were reasonable and undertaken in good faith.

5 10. To the extent that a jury finds that Defendant Omeros was obligated to pay
6 plaintiff wages beyond his termination date, there was a bona fide dispute regarding the
7 compensation and the failure to pay such compensation was not willful.

8 11. Without assuming any burden of proof not otherwise imposed by law, with regard
9 to refusal to pay wages after termination of plaintiff's employment, Defendant Omeros' conduct
10 with regard to the allegations in plaintiff's Complaint was reasonable, in good faith, and not
11 willful.

12 12. Without assuming any burden of proof or production not otherwise imposed by
13 law, plaintiff's employment was at-will.

14 13. Pending further discovery, some or all of plaintiff's claims may be barred by
15 estoppel, laches, or other defenses set forth in FRCP 8(c).

16 14. Pending further discovery, plaintiff's claims may be subject to the defenses set forth
17 in FRCP 12(b).

18 15. Defendant Omeros did not take any act alleged in the Complaint with the intent to
19 defraud the federal government, and (without assuming any burden of proof not otherwise
20 imposed by law) did not, in fact, defraud the government or draw down any grant funds to which
21 Defendant Omeros was not entitled by the work performed on the grant in question.

22 16. To the extent that a jury concludes that any improper, retaliatory motive
23 contributed to or caused the decision to terminate the plaintiff's employment, which is
24 specifically denied by Defendant Omeros, Defendant Omeros would have made the same
25 decision in the absence of retaliatory factors.
26
27

17. Without assuming any burden of proof or production not otherwise imposed by law, the statements made by Defendant Omeros concerning plaintiff in its S-1 registration were substantially true.

18. Defendant Omeros enjoyed a qualified or conditional privilege with respect to the statements made to the Securities and Exchange Commission with respect to plaintiff.

Defendant Omeros reserves the right to assert by supplemental pleading any affirmative defense or counterclaim which matures or is acquired after this answer is filed and served, or which comes to light through discovery in this action.

V. JURY TRIAL DEMAND

Defendant Omeros demands a jury trial.

VI. ANSWER TO PLAINTIFF'S REQUEST FOR "DAMAGES"

Answering plaintiff's request for damages, these paragraphs are statements of plaintiff's legal position, which require no answer. Notwithstanding the foregoing, Defendant Omeros denies that plaintiff has any claims or causes of action against Defendant under the statutes or legal theories that he attempts to invoke. Furthermore, Defendant Omeros denies that the plaintiff is entitled to any form of relief against Defendant.

DEFENDANT OMEROS' COUNTERCLAIMS

A. PARTIES

1. Defendant Omeros Corporation ("Omeros") is a Washington corporation doing business in Seattle, Washington.

2. On information and belief, plaintiff Richard Klein is a resident of Seattle, Washington.

B. JURISDICTION AND VENUE

3. This Court has jurisdiction over Defendant Omeros' counterclaims because the action was instituted in this Court, and the Court has supplemental jurisdiction to hear related claims under 28 U.S.C. § 1367.

1 4. Venue in the Western District is proper pursuant to 28 U.S.C. § 1391 because all of
2 the acts alleged occurred in Seattle, Washington.

3 **C. FACTS RELEVANT TO COUNTERCLAIMS**

4 5. Defendant Omeros hired plaintiff on May 14, 2007.

5 6. Plaintiff signed an Employee Proprietary Information and Inventions Agreement
6 (“PIIA”) on May 14, 2007. The agreement prohibited plaintiff from disclosing or using any
7 proprietary information, except as authorized by the company, and specifically required that
8 plaintiff return to Omeros all proprietary information and other “documents, apparatus,
9 equipment and other physical property in any form, whether or not pertaining to Proprietary
10 Information” to Omeros upon termination of plaintiff’s employment.

11 7. Defendant Omeros obtained a grant from the National Institute of Health (“NIH”)
12 as a successor in interest to another company that it had acquired.

13 8. The responsibilities of plaintiff’s position assumed by plaintiff in May 2007
14 included management of Omeros’ NIH grants, and Dr. Gregory Demopoulos, M.D., Chief
15 Executive Officer of Omeros, specifically underscored plaintiff’s responsibility for personal
16 supervision of the NIH grants in a series of emails in July 2008. Plaintiff was responsible for,
17 among other things, monitoring the number of hours that Omeros’ scientists worked on the
18 project.

19 9. On December 2, 2008, Dr. Demopoulos met with plaintiff regarding various
20 company issues. The meeting evolved into a verbal performance review of plaintiff’s work.
21 Dr. Demopoulos identified specific problems and issues regarding plaintiff’s performance.
22 Plaintiff asked Dr. Demopoulos if plaintiff would remain employed with Omeros for an extended
23 period of time. Dr Demopoulos reminded plaintiff that he was an at-will employee and that,
24 particularly in view of plaintiff’s performance problems, Dr. Demopoulos could not guarantee that
25 plaintiff would remain employed by Omeros.

26 10. On December 3, 2008, plaintiff telephoned David Mann, the Chair of Omeros’
27 Audit Committee. Plaintiff informed Mr. Mann that plaintiff thought something was wrong with
28

1 “things” around the company. Mr. Mann asked plaintiff if he was making an official complaint,
2 or questioning the integrity of the financial statements of Omeros, and plaintiff said that he was
3 not. Plaintiff informed Mr. Mann that he needed to investigate his concerns before proceeding
4 further.

5 11. On December 5, 2008, Omeros’ Human Resources Manager circulated Omeros’
6 recently adopted Whistleblower Policy to all company employees including plaintiff.

7 12. On December 5, 2008, plaintiff called several of the scientists who worked on the
8 NIH program. On information and belief, in response to questions from plaintiff, the scientists
9 told plaintiff that they were reporting more hours than they worked on the project. Plaintiff did
10 not review the hours that were reported or the hours that were charged to NIH.

11 13. On December 8, 2008, plaintiff told Mr. Mann his complaint about hours being
12 reported improperly on a single NIH grant. Plaintiff specifically informed Mr. Mann that he was
13 complaining pursuant to Omeros’ Whistleblower Policy and, when offered other avenues of
14 addressing the concerns by Mr. Mann, plaintiff specifically reiterated his desire to invoke the
15 Whistleblower Policy and that he did not want to address the complaint through a management
16 investigation.

17 14. Plaintiff held himself out as a sophisticated individual with substantial experience
18 in corporate finance, and was also familiar with Omeros’ Audit Committee Charter, which
19 authorized the Audit Committee to engage advisors and consultants, at Omeros’ expense, in the
20 course of its duties. Plaintiff knew or should have known that as a consequence of his requesting
21 whistleblower treatment of his concern, the company would be required to engage outside
22 investigators to assist the Audit Committee.

23 15. Omeros’ Audit Committee immediately initiated an investigation into plaintiff’s
24 complaint. The Audit Committee engaged special counsel to investigate plaintiff’s complaint.

25 16. The Audit Committee determined that the scientists were recording in Omeros’
26 internal timekeeping system more hours than they worked on the project during the relevant time
27 period. But, the Audit Committee discovered that Omeros’ Controller, David Toll, (an Omeros’
28

1 employee who reported directly to plaintiff) had initiated internal controls to limit the number of
2 hours that Omeros charged to NIH. The Audit Committee determined that NIH was never
3 charged more hours than the scientists worked on the project.

4 17. During the period of approximately December 22, 2008, through the first week in
5 January 2009, plaintiff brought his personal laptop computer into Omeros' offices. During this
6 time, plaintiff worked on his personal computer, side-by-side with his Omeros-supplied laptop
7 computer. Sometime during December 2008, plaintiff contacted Omeros' IT department and
8 asked how to connect his personal laptop within Omeros' offices to Omeros' network via virtual
9 private network software ("VPN").

10 18. During the period of approximately December 22, 2008, through the first week in
11 January 2009, plaintiff shielded the screen of his personal computer from the view of Omeros'
12 Controller, David Toll.

13 19. After using his personal computer in his office for one and a half weeks,
14 Ms. Kelbon, Omeros' General Counsel, confronted plaintiff regarding his use of his personal
15 laptop and reminded plaintiff about his obligations under the proprietary information agreement.
16 Plaintiff persisted in the behavior for an additional week after being requested by Ms. Kelbon to
17 stop.

18 20. After the Audit Committee completed its investigation, Omeros asked plaintiff on
19 December 19, 2009, to proceed with completion and execution of a regular monthly certification
20 to Omeros' venture debt lender concerning the accuracy of Omeros' financial statements for the
21 month prior. Between December 19, 2008, and December 30, 2008, plaintiff repeatedly refused
22 to execute this certification unless he first received from the Company personal assurances and
23 authorizations to conduct his own investigation of unspecified concerns. These assurances and
24 investigation, if provided and authorized, would not have changed the accuracy and veracity of
25 the financial statements to which he was willing to certify with such assurances and
26 authorization. The financial statements plaintiff sought to have investigated had been prepared
27 by him or under his supervision in the first place.

21. During the period of December 19, 2008, through January 13, 2009, plaintiff diverted company resources, including finance department's staff time, away from departmental priorities to assist him in conducting an unauthorized personal investigation. During this time, plaintiff bullied and berated the finance department staff, resulting in half of the department's staff tendering or threatening their resignations.

22. Plaintiff was terminated from employment on January 29, 2009.

23. Plaintiff refused to return his company-purchased BlackBerry™ portable data device to Omeros.

24. Due to plaintiff's secretive behavior and peculiar use of his personal computer, Omeros hired an electronic discovery firm to conduct a forensic analysis of the hard drive from the company-supplied laptop computer that was used by plaintiff.

25. On April 22, 2009, the electronic discovery firm reported that the forensic examination of plaintiff's hard drive revealed that plaintiff copied Omeros' documents to removable storage devices and emailed Omeros' documents to his personal email address. The electronic discovery firm also reported that plaintiff's hard drive showed plaintiff had made extensive use of Omeros' computer for personal internet activity. Omeros also discovered from a review of archived data that plaintiff created a document titled "Transition Plan" on November 26, 2008. The document states that plaintiff felt "extremely vulnerable with regards to job security" and wanted to "explore the options for mitigating this vulnerability."

D. COUNTERCLAIMS

a. Breach of Contract

26. Omeros re-alleges and incorporates by reference the allegations contained in counterclaim paragraphs 1-25 above.

27. Plaintiff entered into the PIIA in exchange for valid consideration as his employment with Omeros began.

1 28. The PIIA prohibits plaintiff from disclosing or using any of Omeros' proprietary
2 information, except as authorized by the company, and required that plaintiff return Omeros'
3 documents and property to Omeros upon the termination of plaintiff's employment.

4 29. Plaintiff has breached the PIIA by removing proprietary information and
5 documents from Omeros' system, removing and not returning Omeros' documents, and not
6 returning a BlackBerry™ owned by Omeros and containing Omeros' proprietary information
7 after his termination.

8 30. Omeros cannot place a precise dollar amount on the damages incurred by
9 plaintiff's conduct, the protection that its PIIA provides, nor the harm it will continue to suffer if
10 plaintiff is permitted to evade that protection.

11 31. In addition to that identified above, the irreparable harm to Omeros consists of,
12 but is not necessarily limited to, the possession of its proprietary and non-public information and
13 the potential use of the same or misappropriation of the same by a third party to this action, to the
14 damage of Omeros' business interests, or its use for purposes competitive to Omeros or to harm
15 Omeros' business plans, products, anticipated products or otherwise. Plaintiff has no right to
16 possess Omeros' proprietary information and his mere possession of it damages Omeros'
17 continued interest in enforcing its PIIA.

18 32. Omeros has no adequate remedy at law against plaintiff.

19 33. Plaintiff should be ordered to return any documents and/or company information
20 taken from Omeros to Omeros to prevent further breaches of contract and further harm to
21 Omeros.

22 **b. Misappropriation of Trade Secrets (Chapter 19.108 RCW)**

23 34. Defendant re-alleges and incorporates by reference the allegations contained in
24 counterclaim paragraphs 1-33 above.

25 35. Omeros has expended substantial time, money and effort in the development of its
26 confidential, proprietary and trade secret information.

1 36. Some of the confidential, proprietary and trade secret information of Omeros
2 derives independent economic value (actual or potential) from not being generally known to, and
3 not being readily ascertainable by proper means by, other persons who can obtain economic
4 value from the disclosure or use of this information.

5 37. This confidential, proprietary and trade secret information is the subject of efforts
6 by Omeros that are reasonable under the circumstances to maintain the secrecy of the
7 information.

8 38. Such confidential, proprietary and trade secret information constitutes protectable
9 trade secrets of Omeros.

10 39. Omeros' trade secret information gives Omeros a competitive advantage in the
11 marketplace.

12 40. Plaintiff has a statutory duty to keep secret, and not to disclose or use, the trade
13 secrets of Omeros.

14 41. Plaintiff removed proprietary and trade secret information from Omeros. Plaintiff
15 does not have the right to possess any of Omeros' proprietary and trade secret information. On
16 information and belief, plaintiff intends to disclose or improperly use Omeros' trade secrets.

17 42. On information and belief, plaintiff's inevitable disclosure or use of Omeros'
18 trade secrets is proximately causing or will proximately cause injury to Omeros in violation of
19 Washington's Uniform Trade Secrets Act, Chapter 19.108 RCW.

20 43. If plaintiff is not enjoined from misappropriating or threatening to misappropriate
21 the trade secrets of Omeros, his conduct will proximately cause further injury to Omeros in
22 violation of Washington's Uniform Trade Secrets Act, Chapter 19.108 RCW.

23 44. If plaintiff's actual and/or threatened misappropriation of trade secrets is not
24 enjoined, Omeros will suffer irreparable harm for which they have no adequate remedy at law.

25 **c. Breach of Fiduciary Duty and Duty of Good Faith (RCW 23B.08.420)**

26 45. Defendant re-alleges and incorporates by reference the allegations contained in
27 counterclaim paragraphs 1-44 above.

1 46. As the Chief Financial Officer of Omeros, plaintiff was a fiduciary and an officer
2 of Omeros and owed Omeros a duty of loyalty and good faith.

3 47. Plaintiff breached his duty of loyalty and good faith to Omeros by failing to
4 conduct a reasonable investigation into his complaint regarding the NIH grant management
5 issues raised in his whistleblower complaint prior to blowing the whistle. Plaintiff failed to
6 review the hours reported or assess Omeros' internal controls, even though the controls were
7 initiated by plaintiff's subordinate and plaintiff had been assigned personal responsibility for the
8 financial management of the NIH grant. Plaintiff's complaint was made in bad faith and was an
9 attempt at self preservation, not concern for or about Omeros or its billings to the federal
10 government.

11 48. As a result of plaintiff's breach of his duty of loyalty and good faith, Omeros
12 incurred significant and unnecessary outside costs to the Audit Committee and inside staffing
13 costs and distraction from business to conduct the investigation into plaintiff's complaint, in an
14 amount to be proven at trial.

15 49. As a result of plaintiff's breach of his duty of loyalty and good faith, Omeros has
16 been damaged in an amount to be proven at trial.

17 **DEFENDANT'S PRAYER FOR RELIEF**

18 WHEREFORE, having fully answered plaintiff's Complaint, Defendant Omeros prays:

19 1. That plaintiff take nothing by the Complaint for Damages and that it be dismissed
20 with prejudice and without any award of attorneys' fees, costs or expenses to plaintiff;

21 2. That Defendant Omeros be awarded its attorneys' fees, costs and expenses
22 incurred in defending this action;

23 3. That Defendant Omeros be granted preliminary and permanent injunctive relief
24 requiring the return of all Omeros devices, confidential information and any other company
25 property possessed by plaintiff, without bond.

26 4. That Defendant be granted leave to conform its pleadings to the proofs;
27
28

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the United States of America and hereby certifies that on this day, a true and accurate copy of the document to which this declaration is affixed was filed with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the following:

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DATED this 22nd day of September, 2009.


Deborah A. Hatstat